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To: County and District Superintendents
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Charter School Administrators

From: Janet Sterling, Director
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Subject: Penalties for Lack of Teacher Credentials

The purpose of this memorandum is to advise you as to our understanding of statutes pertaining to state apportionment and penalties as they relate to teacher credential and assignment requirements. In particular, this memorandum describes the scope of new penalties established in *Education Code* Section 45037 as enacted by Assembly Bill 2859 (Chapter 1069, Statutes of 2002). In addition, the last section of this memorandum highlights the teacher qualification requirements contained in the federal No Child Left Behind Act of 2001 and the potential for penalties or revenue losses imposed under that law. For your reference, a copy of this memorandum and each of the *Education Code* sections discussed in this memorandum can be found on our website at <www.cde.ca.gov/fiscal/financial/corresp.htm>.

It is our view that the scope of penalties established in *Education Code* Section 45037 is limited to teachers who lack valid certification documents, and does not extend to whether the teachers also are appropriately assigned consistent with the authorization of their valid credential documents. Further, the penalties do not apply to charter schools, their chartering agencies or to county offices of education on account of the certification status of charter school teachers. These interpretations are discussed below in more detail.

In addition, the plain language of *Education Code* Section 45037 leads us to conclude that its penalties apply only to teachers and not to persons assigned to administrative positions or other non-teaching assignments. Moreover, *Education Code* Section 45037 does not change the way that state or local certification documents are issued.

Background. State financing of school instruction is premised on pupils being taught by teachers who have authorization from the State to teach in public schools. As such, state law establishes various conditions, requirements, and penalties on local education agencies to ensure that only authorized personnel are hired to teach. In addition, the State establishes requirements for the issuance of teacher credentials and other requirements designed to ensure that teachers are appropriately assigned; that is, that they are assigned to teach in a position that is consistent with the authorizations (subject, grade level) of their credentials.

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Valid Certification Documents. Local education agencies receive state funding for reported average daily attendance on the condition that pupils are taught by teachers who hold valid certification documents (*Education Code* Section 46300). A valid certification document is any state-issued certificate or credential -- including a vocational credential and internship credential or certificate; life document or diploma; emergency permit or waiver -- that is in force, not expired or revoked, and authorizes the holder to teach in California public schools in kindergarten or any grades 1 through 12 (*Education Code* Section 44007). A valid certification document also includes any county board of education-issued temporary county certificate that is in force, not expired or revoked, and authorizes the holder to teach in K-12 public schools within the county office's jurisdiction while the holder's credential application is being processed (*Education Code* sections 44004 and 44332).

A valid certification document does not include adult education credentials, services credentials without an underlying basic elementary or secondary credential, child development or children center permits, emergency 30-day substitute teaching permits wherein the teacher has inappropriately taught for more than 30 days during the valid period of the permit in any one classroom, or any certification document that is expired or revoked. A valid certification document also does not include electronic mail confirmations from the Commission on Teacher Credentialing that a credential application has been received or "C-19 letters" issued by colleges and universities. These letters, however, are used at local discretion as one basis for issuing temporary county certificates.

Each person who is employed by a school district in a position requiring certification qualifications is required within 60 days of the date of employment to register a valid certification document. The document must have an issue date on or before the date of employment and must authorize the person to serve in a position for which he or she is being employed. Similarly, each employee has 60 days to register a renewed certification document; and the authorization of any renewed document also must be consistent with the employee's assignment (*Education Code* sections 44857 and 44330). As such, an employee must be appropriately assigned when registering his or her credential document. Each employee is required to register his or her document with the jurisdictional county office of education, or the employer school district if the district is fiscally independent pursuant to *Education Code* Section 42647.

Charter Schools. Pursuant to *Education Code* Section 47605(1), charter school teachers are required to hold certification documents that are equivalent to those which teachers in public, noncharter schools are required to hold. This section states, further, that the certification documents of charter school teachers are to "be maintained on file at the charter school." It concludes with legislative intent that "charter schools be given flexibility with respect to noncore, noncollege preparatory courses." The California Department of Education interprets this section to mean that charter school teachers of at least core or college preparatory subjects are required to hold valid certification documents as a condition of apportionment. For state

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apportionment purposes, teachers of noncore, noncollege courses do not need to hold valid certification documents. For the credential and assignment monitoring purposes discussed below, the Commission on Teacher Credentialing interprets this section to mean that all charter school teachers must hold valid certification documents. In addition, the Commission advises all charter school teachers to register their credential documents with their charter schools and their charter schools' chartering agencies.

Assignment Monitoring. Current law requires -- in an effort to ensure that the rate of teacher misassignment remains low and to the extent that funds are provided -- that school district certificated employee assignment practices be monitored and reviewed on a scheduled basis (*Education Code* Section 44258.9). Each county superintendent of schools is to annually monitor schools and school districts that are likely to have problems based on past experience or other available information. All others are to be reviewed on a four-year cycle. The Commission on Teacher Credentialing is responsible for the monitoring and review of assignment practices of counties or cities and counties in which there is a single school district to ensure that teachers in these districts are appropriately assigned. The Commission also is responsible for tabulating and responding to annual reports of monitoring results submitted by county superintendents of schools. For the California Department of Education's purposes, appropriate assignment is not a condition of state apportionment.

Charter Schools. Pursuant to our understanding of the provisions of *Education Code* Section 47605(l), charter school teachers of at least the core subjects are to be appropriately assigned, the same as all teachers in public, noncharter schools. Like public, noncharter schools, appropriate assignment is not a condition of state apportionment. *Education Code* Section 47605(l) states that the certification documents of charter school teachers are "subject to periodic inspection by the chartering authority." The Commission on Teacher Credentialing has issued guidance, in Coded Correspondence 98-9821, that indicates that the chartering agency, which may or may not be the county office of education, has discretion in determining the frequency and manner of such inspections and assignment monitoring. Neither the county superintendents of schools, unless they are the chartering authority, nor the Commission has responsibility for monitoring teacher assignments in charter schools.

Teacher Salary Payments. County offices and school districts are prohibited from paying the salary of any person who while not holding a "proper" certification document is employed in a position requiring certification qualifications (*Education Code* Section 45034). Thus, in order to draw a salary, teachers (and other personnel) must be appropriately assigned, although the law does not attach a financial penalty for failure to meet this assignment requirement.

Charter Schools. *Education Code* Section 47610 states that charter schools are generally exempt from laws governing school districts. In addition, because the language of *Education Code* Section 45034 does not explicitly address charter schools, and charter school payroll agents as a uniform practice do not have access to information about charter school teachers' certification

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status, it is the California Department of Education's interpretation that the requirements of *Education Code* Section 45034 do not apply to charter schools. Therefore, county offices of education, school districts, and charter schools are not specifically prohibited from releasing salary payments to charter school teachers who lack proper certification documents. The California Department of Education advises chartering agencies to establish with their charter schools the frequency and manner of agency inspections of credential documents and teacher assignments, and any role that the payroll agent is to have in ensuring that charter school teachers of at least the core or college preparatory subjects hold valid certification documents and are appropriately assigned.

State Penalties. Prior to the recent establishment of *Education Code* Section 45037, if a teacher of kindergarten or any of grades 1 through 12 did not hold a valid certification document, the employer local education agency could incur up to three different penalties, which in total could be costly:

- First, the local education agency paid a penalty equivalent to the amount of overclaimed average daily attendance apportionment attributable to the pupils in the teacher's classroom during the time he or she did not hold a valid certification document (*Education Code* Section 46300).
- Second, the local education agency paid a penalty equivalent to the marginal incentive and base-year funding for longer instructional day and longer year attributable to the teacher's instructional time during the time he or she did not hold a valid certification document (*Education Code* Section 46200).
- Third, the local education agency paid a penalty equivalent to the amount of any overclaimed K-3 class-size reduction program funding; this funding is conditioned on program teachers holding valid credential documents issued by the Commission on Teacher Credentialing (*Education Code* Section 52123).

Assembly Bill 2859. Assembly Bill 2859 was enacted to establish *Education Code* Section 45037 and supersede the above three penalties with a single penalty for cases when a teacher lacks a valid certification document. The above three legal requirements and penalties continue to be operative, however, for noncompliance involving other than teacher certification but still involving overclaimed average daily attendance, shortfalls in instructional time, and K-3 class-size reduction requirements.

The single penalty is calculated by dividing the number of school days taught for the local education agency by teachers who lacked valid certification documents by the number of school days taught by all teachers, and then multiplying this quotient by the local education agency's

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revenue limit entitlement (*Education Code* Section 45037(b)). The single penalty became effective with the beginning of the 2001-02 school year (*Education Code* Section 45037(a)).

Assembly Bill 2859 County Office Penalty. In addition, Assembly Bill 2859 provides for a new penalty to be imposed on a county office of education if a school district in its jurisdiction was assessed the single penalty for lack of a valid certification document and the county office of education paid the teacher's salary (*Education Code* Section 45037(c)). This county office penalty is effective with the beginning of the 2002-03 school year and is calculated as the lesser of three amounts as follows:

1. Fifty percent of all penalties assessed for that fiscal year to all school districts in the county office's jurisdiction for lack of valid certification documents.
2. One-half percent of the total expenditures for that fiscal year from unrestricted resources, as defined in the *California School Accounting Manual*, in the county office's county school service fund, when two or fewer districts in the county office's jurisdiction are subject to penalties for lack of valid certification documents.
3. One percent of the total expenditures for that fiscal year from unrestricted resources, as defined in the *California School Accounting Manual*, in the county office's county school service fund, when three or more districts in the county office's jurisdiction are subject to penalties for lack of valid certification documents.

Charter Schools. *Education Code* Section 47610 states that charter schools are generally exempt from laws governing school districts. In addition, because the language of *Education Code* Section 45037 does not explicitly address charter schools, it is the California Department of Education's interpretation that *Education Code* Section 45037 does not apply to charter schools. Therefore, *Education Code* Section 45037 does not provide for the levy of penalties on charter schools, their chartering agencies, or county offices of education on account of charter school teachers who lack valid certification documents.

Validation of Service. *Education Code* Section 45037(a) affords relief from the penalties established in subdivisions (b) and (c) of that section through the existing Validation of Service process. State law permits the Commission on Teacher Credentialing, under limited circumstances, to validate or "make legal" the service of a person who while not holding a valid credential is employed in a position requiring certification qualifications (*Education Code* Section 45036). To be eligible for Validation of Service, the person, among other requirements, must have been qualified for the credential that was required for the position he or she had held without valid certification. In the absence of compelling circumstances, the Commission will validate a maximum of six months of service per occurrence, and requires the request for validation to be received within six months of the period requiring validation.

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Validation of Service, thus, provides for the legal flow of salary payments and average daily attendance apportionment when credentialing requirements are materially met. Under *Education Code* Section 45037 it also serves, under limited circumstances, to relieve the employer school district and county office of education of the penalties that would otherwise be imposed by that section. For more detailed information on Validation of Service, please refer to *California Code of Regulations*, Title 5, Education, sections 80600 through 80604. For additional information, please contact the Commission on Teacher Credentialing at (888) 921-2682.

Federal No Child Left Behind Teacher Qualification Requirements. Local education agencies that employ teachers who hold valid certification documents are not subject to the state-imposed penalties described above in this memorandum. It is not known, however, whether and to what extent these same local education agencies will be subject to revenue loss from federal funding sources if they do not meet the teacher qualification requirements imposed by the federal No Child Left Behind (NCLB) law.

Certain valid certification documents that currently provide authorization from the State to teach in California public schools are not aligned with the NCLB teacher qualification requirements. On the first day of school in 2002, all teachers new to the profession who were teaching core subjects in Title I targeted assistance or school-wide programs were required to meet NCLB teacher qualification requirements. At the start of the 2005-06 school year, all veteran teachers who teach core subjects, regardless of the funding source, must be "highly qualified" based on a definition that is to be adopted by the State. Currently, the State's definition is pending approval by the State Board of Education. Although the State has not yet adopted a definition of "highly qualified," it is certain that holders of emergency permits, waivers, and individuals who are classified as pre-interns will not meet the federal or state definition of "highly qualified." For information on State Board actions with respect to teacher qualifications requirements and NCLB implementation, please refer to the California Department of Education website address, <http://www.cde.ca.gov/pr/nclb/>.

If you have any questions regarding this memorandum, please call Ellen Venturino, Consultant, at (916) 322-2150 or Scott Hannan, Administrator, Management Assistance and Categorical Programs Unit, at (916) 327-0538.

Notice

To the extent that this memorandum contains guidelines in addition to recitation of the law, those guidelines are exemplary only and compliance with them is not mandatory.

Education Code Sections Referenced in California Department of Education Memorandum on Penalties for Lack of Teacher Credentials

42647. With the approval of the Superintendent of Public Instruction, the governing board of a unified school district, or district with over 10,000 average daily attendance, may cause to be drawn all warrants on the county treasurer against all the funds, except debt service, of the district in the county treasury in the payment of the expenses of the district. The warrants shall be issued by a person designated as the district auditor or district disbursing officer for the school district on the county treasurer in favor of the persons entitled thereto in payment of all claims chargeable against the district which have been legally examined, allowed, and ordered paid by the governing board. The district auditor shall issue warrants on the county treasurer for all debts and demands against the district when the amounts are fixed by law. The form of the warrant shall be as prescribed by the governing board and approved by the county auditor or county treasurer having jurisdiction.

Notwithstanding Section 42631, the cost of printing the warrants shall be borne by the district.

No county officer shall be responsible for producing reports, statements, and other data relating to or based on these payments of the expenses of the districts. Those districts issuing warrants as provided by this section shall provide the county superintendent of schools, in the form prescribed by him or her, with the data necessary to make retirement reports and other reports required of him or her by law. All warrants, vouchers, and supporting documents shall be kept by the school districts that draw their own warrants.

Notwithstanding Section 27005 of the Government Code, or any other section requiring orders for warrants or warrants to be signed by the county superintendent of schools or the county auditor, or both, the county treasurer shall pay the warrant, if money is available.

Notwithstanding Section 41000, except for assessing and tax collecting, the county auditor and the county treasurer may charge those districts that draw their own warrants for the cost of all fiscal services.

The person authorized by the governing board of the district to issue warrants pursuant to this section shall execute an official bond in an amount fixed by the governing board conditioned upon the faithful performance of his or her duties under this section. A county superintendent of schools or a county auditor shall not be liable under the terms of their bonds or otherwise for any warrant issued pursuant to this section. It is not intended that this provision shall be applied so as to impair the obligation of any contract in the bond of the officer in effect on the effective date of this section.

A listing of the warrants issued under this section by each school district shall be forwarded to the county auditor having jurisdiction, upon his or her request, and to the county superintendent of schools having jurisdiction over the district on the same day warrants are issued. The listing, which may be magnetic tape, punched cards, or in other form, shall report, among other things, the warrant number, date of the warrant, amount of the warrant, the name of the payee, and the fund on which the warrant is drawn.

The form and content of the warrant listing shall be as prescribed by the governing board and approved by the county auditor having jurisdiction.

Each unified school district or district with over 10,000 average daily attendance that issues warrants pursuant to this section shall furnish monthly to the county superintendent of schools and the county auditor of the county of jurisdiction, upon his or her request, a statement showing for the current fiscal year to date, for each required expenditure classification, the amount budgeted, actual expenditures, encumbrances and unencumbered balances.

In order to obtain the approval of the Superintendent of Public Instruction, a unified school district, or district with over 10,000 average daily attendance, shall file a written application with the county superintendent of schools of jurisdiction. Upon receipt of an application from the district, the county superintendent of schools shall cause a survey to be made of the district's

accounting controls by an independent certified public accountant or public accountant in accordance with standards prescribed by the Controller. The certified public accountant or public accountant shall report his or her findings and recommendations to the county superintendent, county auditor, and to the applicant district.

The county superintendent shall forward the district's application, together with his or her other recommendations and the recommendations of the county auditor and a report of the survey, to the Superintendent of Public Instruction for approval or disapproval of the application. The Superintendent of Public Instruction shall approve the application only if he or she finds that the accounting controls of the district are adequate. If the Superintendent of Public Instruction determines that these controls are inadequate, he or she shall disapprove the application.

The county superintendent of schools shall be reimbursed for all costs incident to the accounting controls survey made pursuant to the district's application from the district's funds.

When approved by the Superintendent of Public Instruction, the issuance of warrants pursuant to this section shall be effective at the beginning of the fiscal year if the approval had been made prior to the preceding first day in January. If the issuance of warrants has been disapproved, the Superintendent of Public Instruction and the county superintendent of schools shall state the specific steps that must be taken by the school district in order to receive approval. If at any time the county superintendent of schools determines that the accounting controls of the district have become inadequate, he or she may recommend to the Superintendent of Public Instruction that the approval be revoked, to be effective on the first day of the following fiscal year.

44002. A "credential" includes a credential, certificate, life document, life diploma, permit, certificate of clearance, or waiver issued by the commission.

44003. A "life diploma" is a document issued on the basis of a credential upon completion by the applicant of specified requirements.

44004. The word "certificate" used as a noun refers to the document issued by a county board of education to license the holder to perform the service specified in the certificate.

44005. The word "certificate" used as a verb refers to the act of licensing individuals for employment in educational positions.

44006. The term "certificated person" refers to a person who holds one or more documents such as a certificate, a credential, or a life diploma, which singly or in combination license the holder to engage in the school service designated in the document or documents.

44007. The term "certification document" as used in this code includes only certificates, credentials and life diplomas.

44258.9. (a) The Legislature finds that continued monitoring of teacher assignments by county superintendents of schools will ensure that the rate of teacher misassignment remains low. To the extent possible and with funds provided for that purpose, each county superintendent of schools shall perform the duties specified in subdivisions (b) and (c).

(b) (1) Each county superintendent of schools shall annually monitor and review school district certificated employee assignment practices according to the following priority:

(A) Schools and school districts that are likely to have problems with teacher misassignment based on past experience or other available information.

(B) All other schools on a four-year cycle.

(2) The Commission on Teacher Credentialing shall be responsible for the monitoring and review of those counties or cities and counties in which there is a single school district, including

the Counties of Alpine, Amador, Del Norte, Mariposa, Plumas, and Sierra, and the City and County of San Francisco. All information related to the misassignment of certificated personnel shall be submitted to each affected district within 45 calendar days of the monitoring activity.

(e) County superintendents of schools shall submit an annual report to the Commission on Teacher Credentialing summarizing the results of all assignment monitoring and reviews. These reports shall include, but need not be limited to, the following:

(1) The numbers of teachers assigned and types of assignments made by local district governing boards under the authority of Sections 44256, 44258.2, and 44263 of the Education Code.

(2) Information on actions taken by local committees on assignment, including the number of assignments authorized, subject areas into which committee-authorized teachers are assigned, and evidence of any departures from the implementation plans presented to the county superintendent by school districts.

(3) Information on each school district reviewed regarding misassignments of certificated personnel, including efforts to eliminate these misassignments.

(4) After consultation with representatives of county superintendents of schools, other information as may be determined to be needed by the Commission on Teacher Credentialing.

(f) Commencing in 1990, the Commission on Teacher Credentialing shall submit biennial reports to the Legislature concerning teacher assignments and misassignments which shall be based, in part, on the annual reports of the county superintendents of schools.

(g) (1) The Commission on Teacher Credentialing shall establish reasonable sanctions for the misassignment of credential holders.

Prior to the implementation of regulations establishing sanctions, the Commission on Teacher Credentialing shall engage in a variety of activities designed to inform school administrators, teachers, and personnel within the offices of county superintendents of schools of the regulations and statutes affecting the assignment of certificated personnel. These activities shall include the preparation of instructive brochures and the holding of regional workshops.

(2) Commencing July 1, 1989, any certificated person who has been required by an administrative superior to accept an assignment for which he or she has no legal authorization shall, after exhausting any existing local remedies, notify the county superintendent of schools in writing of the illegal assignment. The county superintendent of schools shall, within 15 working days, advise the affected certificated person concerning the legality of his or her assignment. There shall be no adverse action taken against a certificated person who files a notification of misassignment with the county superintendent of schools. During the period of the misassignment, the certificated person who has filed a written notification with the county superintendent of schools shall be exempt from the provisions of Section 45034. If it is determined that a misassignment has taken place, any performance evaluation of the employee under Sections 44660 to 44664, inclusive, in any misassigned subject shall be nullified.

(3) Commencing July 1, 1989, the county superintendent of schools shall notify, through the office of the district superintendent, any certificated school administrator responsible for the assignment of a certificated person to a position for which he or she has no legal authorization of the misassignment and shall advise him or her to correct the assignment within 30 calendar days. The county superintendent of schools shall notify the Commission on Teacher Credentialing of the misassignment if the certificated school administrator has not corrected the misassignment within 30 days of the initial notification, or if the certificated school administrator has not described, in writing, within the 30-day period, to the county superintendent of schools the extraordinary circumstances which make this correction impossible.

(4) Commencing July 1, 1989, the county superintendent of schools shall notify any superintendent of a school district in which 5 percent or more of all certificated teachers in the secondary schools are found to be misassigned of the misassignments and shall advise him or her to correct the misassignments within 120 calendar days. The county superintendent of schools shall notify the Commission on Teacher Credentialing of the misassignments if the school district

superintendent has not corrected the misassignments within 120 days of the initial notification, or if the school district superintendent of schools has not described, in writing, within the 120-day period, to the county superintendent of schools the extraordinary circumstances which make this correction impossible.

(h) Commencing July 1, 1989, each applicant for a professional administrative service credential shall be required to demonstrate knowledge of existing credentialing laws, including knowledge of assignment authorizations.

44330. Except where such service is provided by a school district pursuant to Section 44332.5, each county or city and county board of education may provide for the registration of any valid certification or other document authorizing the holder thereof to serve in a position requiring certification qualifications as an employee of the county superintendent of schools of such county or city and county or of a school district under the jurisdiction of such county superintendent of schools. Such registration shall authorize the service of the holder as an employee of the county superintendent of schools or of any school district under his jurisdiction in the capacity in which and for the period of time for which the certification or other document is valid.

44332. (a) Except where that service is provided by a school district authorized to register certification documents pursuant to Section 44332.5, each county or city and county board of education may issue temporary certificates for the purpose of authorizing salary payments to certified employees whose credential applications are being processed or to personnel employed in children's centers or other preschool educational programs whose permit applications are being processed. However, the individual must have demonstrated proficiency in basic reading, writing, and mathematic skills pursuant to the requirements of Section 44252.5. The applicant for the temporary certificate shall make a statement under oath that he or she has duly filed an application for a credential or permit together with the required fee and that, to the best of his or her knowledge, no reason exists why a certificate or permit should not be issued. The certificate or permit shall be valid for not more than one calendar year from the date of issuance.

(b) The county or city and county board of education shall cancel the temporary certificate or permit immediately upon receipt of certification in writing from the commission that the applicant apparently does not possess adequate academic qualifications or apparently has a criminal record that would disqualify the applicant.

(c) A temporary certificate issued to a permit applicant is not valid beyond the time that the commission either issues or denies the originally requested permit. A temporary certificate issued to a credential applicant is not valid beyond the time that the commission provides written notification to the county or city and county board of education that the applicant apparently does not possess adequate qualifications, that the commission has received facts that may cause denial of the application, or issues or denies the originally requested credential.

(d) A county or city and county board of education may not issue a temporary certificate to an applicant whose teaching credential is revoked or suspended.

44857. Each person employed by the governing board of a school district for a position requiring certification qualifications shall, not later than 60 days after the date fixed by the governing board of the district for the commencement of the person's service, register, in the manner prescribed by Section 44330, a valid certification document issued on or before that date, authorizing the person to serve in the position for which he or she was employed, and shall, not later than 60 days after the renewal thereof, register the renewed certification document in the manner prescribed by Section 44330. If any person so employed is the holder of a California State University, or state teachers college, diploma accompanied by the certificate of the State Board of Education, or of an

educational or life diploma of this state, and has presented the diploma to, and has had his or her name recorded by, the county superintendent of schools of the county, the person shall be deemed to have registered the diploma under Section 44330.

45034. No order for a warrant, and no warrant drawn pursuant to Section 42647, shall be drawn in favor of any person employed in a position requiring certification qualifications, unless such person is at the time the holder of a proper certification document in full force for the full time for which the requisition or warrant, as the case may be, is drawn, and on file or registered as required by law at the time and unless he is employed by the governing board of the unified school district, or district with over 10,000 average daily attendance or by the county superintendent of schools as provided in this code.

45036. Whenever, on or after September 15, 1961, a person has rendered service in a position requiring certification qualifications, or the governing board of a district has employed a person in a position requiring certification qualifications, or the county superintendent has drawn an order for a warrant in favor of a person in a position requiring certification qualifications, for a period of service during which the person did not have a valid credential required for such position in force as required by law, and when as a result thereof the employment of the person to render

such service, the rendering of such service, the inclusion of the attendance of pupils taught by the person in the average daily attendance of the district, or the drawing of the order warrant for the service of such person, is in violation of Section 46300, 44830, 45034 or any other provision of this code, such employment, rendering of service, inclusion of attendance, or drawing of the order for the warrant shall be deemed fully legal for all purposes if the Commission for Teacher Preparation and Licensing approves thereof in accordance with this section.

The Commission for Teacher Preparation and Licensing shall adopt rules and regulations to establish procedures for a review in such cases and shall determine whether the rendering of such service shall be approved and made fully legal for all purposes. If the commission gives its approval to the rendering of such service, then such employment, inclusion of attendance, and drawing of the order for the warrant shall be automatically approved and made fully legal for all purposes.

The commission shall not approve of the rendering of such service unless it determines that the person rendering the service had, in fact, the necessary qualifications, during the period of service in question, for the credential required by law for the position in which the service was rendered, and unless a valid credential required for such position has been issued to such person prior to review and action by the commission.

45037. (a) Except as provided in Section 45036, for the fiscal year 2001-02 and for any fiscal year thereafter in which a person renders service as a teacher in kindergarten or any of grades 1 to 12, inclusive, who does not have a valid certification document, the school district or county office of education in which the person is employed shall be assessed a penalty that shall be in lieu of any loss of funding that would otherwise result under Chapter 6.10 (commencing with Section 52120) of Part 28. The penalty shall be calculated as provided in subdivision (b) and withheld from state funding otherwise due to the district or county office of education.

(1) Notwithstanding Section 46300, the attendance of the noncertificated person's pupils during the period of service shall be included in the computation of average daily attendance.

(2) The noncertificated person's period of service shall not be excluded from the determination of eligibility for incentive funding for a longer instructional day or year, or both, pursuant to Article

8 (commencing with Section 46200) of Chapter 2 of Part 26.

(b) (1) For each person who rendered service in the employment of the district or county office of education as a teacher in kindergarten or any of grades 1 to 12, inclusive, during the fiscal year, add the total number of schooldays on which the person rendered any amount of the service.

(2) For each person who rendered service in the employment of the district or county office of education as a teacher in kindergarten or any of grades 1 to 12, inclusive, during the fiscal year, for a period of service during which the person did not have a valid certification document, add the number of schooldays on which the person rendered any amount of the service without a valid certification document.

(3) Divide the number determined in paragraph (2) by the number determined in paragraph (1) and carry the result to four decimal places.

(4) Multiply a school district's revenue limit entitlement for the fiscal year, calculated pursuant to Section 42238, or its funding amount calculated pursuant to Article 4 (commencing with Section 42280) of Chapter 7 of Part 24, as applicable, or a county office of education's funding for the fiscal year, for the program in which the noncertificated person rendered service by the number determined in paragraph (3).

(c) Beginning in 2002-03, if a county office of education draws an order for a warrant in favor of a person for whom a period of school district service is included in the calculation set forth in paragraph (2) of subdivision (b), the county office shall be assessed a penalty. The penalty assessed to a county office for any fiscal year in which one or more district teachers did not have a valid certification document shall be equal to the lesser of three amounts as follows:

(1) Fifty percent of all penalties assessed for that fiscal year to all school districts in the county office's jurisdiction pursuant to subdivision (b).

(2) One-half percent of the total expenditures for that fiscal year from unrestricted resources, as defined in the California School Accounting Manual, in the county office's county school service fund, when two or fewer districts in the county office's jurisdiction are subject penalties pursuant to subdivision (b).

(3) One percent of the total expenditures for that fiscal year from unrestricted resources, as defined in the California School Accounting Manual, in the county office's county school service fund, when three or more districts in the county office's jurisdiction are subject penalties pursuant to subdivision (b).

(d) Nothing in this section may be waived in whole or in any part.

46200. (a) In the 1984-85 fiscal year, for each school district that certifies to the Superintendent of Public Instruction that it offers 180 days or more of instruction per school year, the Superintendent of Public Instruction shall apportion thirty-five dollars (\$35) per unit of average daily attendance, exclusive of adult average daily attendance, the average daily attendance of pupils while participating in regional occupation centers or programs, and average daily attendance for pupils attending summer school. A multitrack year-round school shall be deemed to be in compliance with the 180-day requirement if it certifies to the Superintendent of Public Instruction that it is a multitrack year-round school and maintains its school for a minimum of 163 schooldays. Each school district that received an apportionment pursuant to this subdivision in the 1984-85 fiscal year shall add thirty-five dollars (\$35) to the district's base revenue limit per unit of average daily attendance for the 1985-86 fiscal year.

(b) For any school district that received an apportionment pursuant to subdivision (a) and that offered less than 180 days, or offered less than the number of days required in subdivision (a) for multitrack year-round schools, of instruction in the 1985-86 fiscal year to the 2000-01 fiscal year, inclusive, and that does not provide the minimum number of instructional minutes specified in subdivision (a) of Section 46201 for that fiscal year, the Superintendent of Public Instruction shall reduce the base revenue limit per unit of average daily attendance for that fiscal year or years by

an amount attributable to the increase received pursuant to subdivision (a), as adjusted in fiscal years subsequent to the 1984-85 fiscal year.

(c) For any school district that received an apportionment pursuant to subdivision (a) and that offers less than 180 days of instruction or, in multitrack year-round schools, fewer than the number of days required in subdivision (a) for multitrack year-round schools, in the 2001-02 fiscal year, or any fiscal year thereafter, the Superintendent of Public Instruction shall withhold from the

district's revenue limit apportionment for the average daily attendance of each affected grade level the sum of 0.0056 multiplied by that apportionment, for each day less than 180, or, in multitrack year-round schools, for each day less than the number of days required in subdivision (a) for year-round schools that the district offered.

(d) For any school district that received an apportionment pursuant to subdivision (a) and that offered less than 180 days of instruction as required in subdivision (a) in the 1985-86 fiscal year, to either the end of the final year of the teacher bargaining unit contract in force in that district on January 1, 2002, inclusive, or, if no teacher bargaining unit contract was in force in that district on January 1, 2002, to the end of the 2001-02 fiscal year, inclusive, and that provided the minimum number of instructional minutes in subdivision (a) of Section 46201 during all of the period applicable to the district pursuant to this subdivision, subdivision (c) shall not apply until the first fiscal year following the end of the applicable period of years.

46300. Method of computing average daily attendance

(a) In computing average daily attendance of a school district or county office of education, there shall be included the attendance of pupils while engaged in educational activities required of those pupils and under the immediate supervision and control of an employee of the district or county office who possessed a valid certification document, registered as required by law.

(b) (1) For the purposes of a work experience education program in a secondary school that meets the standards of the California State Plan for Vocational Education, "immediate supervision," in the context of off-campus work training stations, means pupil participation in on-the-job training as outlined under a training agreement, coordinated by the school district under a state-approved plan, wherein the employer and certificated school personnel share the responsibility for on-the-job supervision.

(2) The pupil-teacher ratio in a work experience program shall not exceed 125 pupils per full-time equivalent certificated teacher coordinator. Notwithstanding Section 52033, this ratio may be waived by the State Board of Education pursuant to Article 3 (commencing with Section 33050) of Chapter 1 of Part 20 under criteria developed by the State Board of Education.

(3) A pupil enrolled in a work experience program shall not be credited with more than one day of attendance per calendar day, and shall be a full-time pupil enrolled in regular classes that meet the requirements of Section 46141 or 46144.

(c) (1) For purposes of the rehabilitative schools, classes, or programs described in Section 48917 that require immediate supervision, "immediate supervision" means that the person to whom the pupil is required to report for training, counseling, tutoring, or other prescribed activity shares the responsibility for the supervision of the pupils in the rehabilitative activities with certificated personnel of the district.

(2) A pupil enrolled in a rehabilitative school, class, or program shall not be credited with more than one day of attendance per calendar day.

(d) (1) For the purposes of computing the average daily attendance of pupils engaged in the educational activities required of high school pupils who are also enrolled in a regional occupational center or regional occupational program, the school district shall receive proportional average daily attendance credit for those educational activities that are less than the minimum schoolday, pursuant to regulations adopted by the State Board of Education; however,

none of that attendance shall be counted for purposes of computing attendance pursuant to Section 52324.

(2) A school district shall not receive proportional average daily attendance credit pursuant to this subdivision for any pupil in attendance for less than 145 minutes each day.

(3) The divisor for computing proportional average daily attendance pursuant to this subdivision is 240, except that, in the case of a pupil excused from physical education classes pursuant to

Section 52316, the divisor is 180.

(4) Notwithstanding any other provision of law, travel time of pupils to attend a regional occupational center or regional occupational program shall not be used in any manner in the computation of average daily attendance.

(e) (1) In computing the average daily attendance of a school district, there shall also be included the attendance of pupils participating in independent study conducted pursuant to Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 for five or more consecutive schooldays.

(2) A pupil participating in independent study shall not be credited with more than one day of attendance per calendar day.

(f) For purposes of cooperative vocational education programs and community classrooms described in Section 52372.1, "immediate supervision" means pupil participation in paid and unpaid on-the-job experiences, as outlined under a training agreement and individualized training plans wherein the supervisor of the training site and certificated school personnel share the responsibility for the supervision of on-the-job experiences.

(g) In computing the average daily attendance of a school district, there shall be included the attendance of pupils in kindergarten after they have completed one school year in kindergarten only if the school district has on file for each of those pupils an agreement made pursuant to Section 48011, approved in form and content by the State Department of Education and signed by the pupil's parent or guardian, that the pupil may continue in kindergarten for not more than an additional school year.

47605. (a) (1) Except as set forth in paragraph (2), a petition for the establishment of a charter school within any school district may be circulated by any one or more persons seeking to establish the charter school. A petition for the establishment of a charter school shall identify a single charter school that will operate within the geographic boundaries of that school district. A charter school may propose to operate at multiple sites within the school district, as long as each location is identified in the charter school petition. The petition may be submitted to the governing board of the school district for review after either of the following conditions are met:

(A) The petition has been signed by a number of parents or guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the school for its first year of operation.

(B) The petition has been signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year of operation.

(2) In the case of a petition for the establishment of a charter school through the conversion of an existing public school, that would not be eligible for a loan pursuant to subdivision (b) of Section 41365, the petition may be circulated by any one or more persons seeking to establish the converted charter school. The petition may be submitted to the governing board of the school district for review after the petition has been signed by not less than 50 percent of the permanent status teachers currently employed at the public school to be converted.

(3) A petition shall include a prominent statement that a signature on the petition means that the parent or guardian is meaningfully interested in having his or her child, or ward, attend the charter

school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school. The proposed charter shall be attached to the petition.

(4) After receiving approval of its petition, a charter school that proposes to establish operations at one or more additional sites within the jurisdictional boundaries of the school district shall request a material revision to its charter and shall notify the governing board of the school district of those additional locations. The governing board of the school district shall consider whether to approve those additional locations at an open, public meeting. If the additional locations are approved by the governing board of the school districts, they shall be a material revision to the charter school's charter.

(5) Notwithstanding subdivision (a), a charter school that is unable to locate within the jurisdiction of the chartering school district may establish one site outside the boundaries of the school district, but within the county within which that school district is located, if the school district where the charter school proposes to operate is notified in advance of the charter petition approval, the county superintendent of schools and the Superintendent of Public Instruction are notified of the location of the charter school before it commences operations and either of the following circumstances exist:

(A) The school has attempted to locate a single site or facility to house the entire program but such a facility or site is unavailable in the area in which the school chooses to locate.

(B) The site is needed for temporary use during a construction or expansion project.

(6) Commencing January 1, 2003, a petition to establish a charter school may not be approved to serve pupils in a grade level that is not served by the school district of the governing board considering the petition, unless the petition proposes to serve pupils in all of the grade levels served by that school district.

(b) No later than 30 days after receiving a petition, in accordance with subdivision (a), the governing board of the school district shall hold a public hearing on the provisions of the charter, at which time the governing board of the school district shall consider the level of support for the petition by teachers employed by the district, other employees of the district, and parents. Following review of the petition and the public hearing, the governing board of the school district shall either grant or deny the charter within 60 days of receipt of the petition, provided, however, that the date may be extended by an additional 30 days if both parties agree to the extension. In reviewing petitions for the establishment of charter schools pursuant to this section, the chartering authority shall be guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system and that establishment of charter schools should be encouraged. A school district governing board shall grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice. The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the following findings:

(1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.

(2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.

(3) The petition does not contain the number of signatures required by subdivision (a).

(4) The petition does not contain an affirmation of each of the conditions described in subdivision (d).

(5) The petition does not contain reasonably comprehensive descriptions of all of the following:

(A) (i) A description of the educational program of the school, designed, among other things, to identify those whom the school is attempting to educate, what it means to be an "educated person" in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.

(ii) If the proposed school will serve high school pupils, a description of how the charter school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements. Courses offered by the charter school that are accredited by the Western Association of Schools and Colleges may be considered transferable and courses approved by the University of California or the California State University as creditable under the "A" to "G" admissions criteria may be considered to meet college entrance requirements.

(B) The measurable pupil outcomes identified for use by the charter school. "Pupil outcomes," for purposes of this part, means the extent to which all pupils of the school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the school's educational program.

(C) The method by which pupil progress in meeting those pupil outcomes is to be measured.

(D) The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.

(E) The qualifications to be met by individuals to be employed by the school.

(F) The procedures that the school will follow to ensure the health and safety of pupils and staff. These procedures shall include the requirement that each employee of the school furnish the school with a criminal record summary as described in Section 44237.

(G) The means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.

(H) Admission requirements, if applicable.

(I) The manner in which annual, independent, financial audits shall be conducted, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority.

(J) The procedures by which pupils can be suspended or expelled.

(K) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.

(L) The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools.

(M) A description of the rights of any employee of the school district upon leaving the employment of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school.

(N) The procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter.

(O) A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for the purposes of the Educational Employment Relations Act (Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code).

(P) A description of the procedures to be used if the charter school closes. The procedures shall ensure a final audit of the school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records.

(c) (1) Charter schools shall meet all statewide standards and conduct the pupil assessments required pursuant to Section 60605 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in noncharter public schools.

(2) Charter schools shall, on a regular basis, consult with their parents and teachers regarding the school's educational programs.

(d) (1) In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations,

shall not charge tuition, and shall not discriminate against any pupil on the basis of ethnicity, national origin, gender, or disability. Except as provided in paragraph (2), admission to a charter school shall not be determined according to the place of residence of the pupil, or of his or her parent or guardian, within this state, except that any existing public school converting partially or entirely to a charter school under this part shall adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of that public school.

(2) (A) A charter school shall admit all pupils who wish to attend the school.

(B) However, if the number of pupils who wish to attend the charter school exceeds the school's capacity, attendance, except for existing pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the district except as provided for in Section 47614.5. Other preferences may be permitted by the chartering authority on an individual school basis and only if consistent with the law.

(C) In the event of a drawing, the chartering authority shall make reasonable efforts to accommodate the growth of the charter school and, in no event, shall take any action to impede the charter school from expanding enrollment to meet pupil demand.

(e) No governing board of a school district shall require any employee of the school district to be employed in a charter school.

(f) No governing board of a school district shall require any pupil enrolled in the school district to attend a charter school.

(g) The governing board of a school district shall require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities to be utilized by the school, the manner in which administrative services of the school are to be provided, and potential civil liability effects, if any, upon the school and upon the school district. The description of the facilities to be used by the charter school shall specify where the school intends to locate. The petitioner or petitioners shall also be required to provide financial statements that include a proposed first-year operational budget, including startup costs, and cashflow and financial projections for the first three years of operation.

(h) In reviewing petitions for the establishment of charter schools within the school district, the school district governing board shall give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low achieving pursuant to the standards established by the State Department of Education under Section 54032.

(i) Upon the approval of the petition by the governing board of the school district, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the applicable county superintendent of schools, the State Department of Education, and the State Board of Education.

(j) (1) If the governing board of a school district denies a petition, the petitioner may elect to submit the petition for the establishment of a charter school to the county board of education. The county board of education shall review the petition pursuant to subdivision (b). If the petitioner elects to submit a petition for establishment of a charter school to the county board of education and the county board of education denies the petition, the petitioner may file a petition for establishment of a charter school with the State Board of Education, and the state board may approve the petition, in accordance with subdivision (b). Any charter school that receives approval of its petition from a county board of education or from the State Board of Education on appeal shall be subject to the same requirements concerning geographic location that it would otherwise be subject to if it receives approval from the entity to whom it originally submits its petition. A charter petition that is submitted to either a county board of education or to the State Board of Education shall meet all otherwise applicable petition requirements, including the identification of the proposed site or sites where the charter school will operate.

(2) In assuming its role as a chartering agency, the State Board of Education shall develop criteria to be used for the review and approval of charter school petitions presented to the State Board of Education. The criteria shall address all elements required for charter approval, as identified in subdivision (b) of Section 47605 and shall define "reasonably comprehensive" as used in paragraph (5) of subdivision (b) of Section 47605 in a way that is consistent with the intent of the Charter Schools Act of 1992. Upon satisfactory completion of the criteria, the State Board of Education shall adopt the criteria on or before June 30, 2001.

(3) A charter school for which a charter is granted by either the county board of education or the State Board of Education based on an appeal pursuant to this subdivision shall qualify fully as a charter school for all funding and other purposes of this part.

(4) If either the county board of education or the State Board of Education fails to act on a petition within 120 days of receipt, the decision of the governing board of the school district, to deny a petition shall, thereafter, be subject to judicial review.

(5) The State Board of Education shall adopt regulations implementing this subdivision.

(6) Upon the approval of the petition by the county board of education, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition to the State Department of Education and the State Board of Education.

(k) (1) The State Board of Education may, by mutual agreement, designate its supervisorial and oversight responsibilities for a charter school approved by the State Board of Education to any local education agency in the county in which the charter school is located or to the governing board of the school district that first denied the petition.

(2) The designated local education agency shall have all monitoring and supervising authority of a chartering agency, including, but not limited to, powers and duties set forth in Section 47607, except the power of revocation, which shall remain with the State Board of Education.

(3) A charter school that has been granted its charter through an appeal to the State Board of Education and elects to seek renewal of its charter shall, prior to expiration of the charter, submit its petition for renewal to the governing board of the school district that initially denied the charter. If the governing board of the school district denies the school's petition for renewal, the school may petition the State Board of Education for renewal of its charter.

(l) Teachers in charter schools shall be required to hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. These documents shall be maintained on file at the charter school and shall be subject to periodic inspection by the chartering authority. It is the intent of the Legislature that charter schools be given flexibility with regard to noncore, noncollege preparatory courses.

(m) A charter school shall transmit a copy of its annual, independent, financial audit report for the preceding fiscal year, as described in subparagraph (I) of paragraph (5) of subdivision (b), to its chartering entity, the Controller, the county superintendent of schools of the county in which the charter school is sited, unless the county board of education of the county in which the charter school is sited is the chartering entity, and the State Department of Education by December 15 of each year. This subdivision shall not apply if the audit of the charter school is encompassed in the audit of the chartering entity pursuant to Section 41020.

47610. A charter school shall comply with this part and all of the provisions set forth in its charter, but is otherwise exempt from the laws governing school districts except all of the following:

(a) As specified in Section 47611.

(b) As specified in Section 41365.

(c) All laws establishing minimum age for public school attendance.

52123. A school district's application for funding to implement a program pursuant to this chapter shall include the district's certification of each of the following items as a condition to receiving any apportionment under Section 52126:

(a) Certification of the number of classes in each eligible grade level selected for a class size reduction apportionment pursuant to this chapter.

(b) Certification of pupil enrollment, as of October of the previous calendar year, in each class selected for class size reduction pursuant to subdivision (a). Classes comprised of special education pupils enrolled in special day classes on a full-time basis shall not be included in this program. School districts may not claim funding pursuant to this chapter for any pupil who is enrolled in independent study pursuant to Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 for the full regular schoolday nor may school districts claim funding pursuant to this chapter for any pupil for any portion of the full regular day that the pupil is enrolled in independent study pursuant to that article. Charter schools may not claim funding pursuant to this chapter for any pupil who is enrolled in a program of home study for the full regular schoolday nor may charter schools claim funding for any pupil for any portion of the full regular schoolday that the pupil is enrolled in a program of home study.

(c) (1) Except as provided in paragraph (2), certification that a certificated teacher has been hired by the school district and is providing direct instructional services to each class selected for class size reduction pursuant to this chapter and that there are not more than 20 pupils per each class.

(2) In a school district that applies for funding pursuant to subdivision (h) of Section 52122, certification of all of the following:

(A) A certificated teacher has been hired by the school district and is providing direct instructional services to each class selected for class size reduction pursuant to this chapter.

(B) The ratio of pupils to teacher does not exceed the 20 to 1 standard ratio by more than two pupils.

(3) For the purposes of this subdivision, "class" shall be defined in the same manner as provided in the regulations adopted by the Superintendent of Public Instruction prior to July 1, 1996, pursuant to Sections 41376 and 41378 (subdivision (a) of Section 15103 of Title 5 of the California Code of Regulations).

(d) Certification that the school district has a staff development program pursuant to Section 52127 and that the program has been approved by the governing board of the school district.

(e) Certification that the school district will collect and maintain any data required by the Superintendent of Public Instruction that will aid in the evaluation of the Class Size Reduction Program. The data shall include, but not be limited to, individual test scores or other records of pupil achievement. Any data collected shall be protected in a manner that will not permit the personal identification of any pupil or parent.

(f) Commencing with the 1998-99 school year and each school year thereafter, certification that each class reduced pursuant to this chapter is housed in either a separate, self-contained classroom or that the space of each class for each grade level at that schoolsite provides a square footage per pupil enrolled in each class that is not less than the average square footage per pupil enrolled in those grade levels at that schoolsite in the 1995-96 school year.